

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301  
Indianapolis, IN 46204  
(317) 233-0696  
<http://www.in.gov/legislative>

**FISCAL IMPACT STATEMENT**

**LS 6470**

**BILL NUMBER: HB 1121**

**NOTE PREPARED: Dec 19, 2011**

**BILL AMENDED:**

**SUBJECT:** County Reimbursement for Death Penalty Cases.

**FIRST AUTHOR:** Rep. McNamara

**BILL STATUS:** As Introduced

**FIRST SPONSOR:**

**FUNDS AFFECTED:**  GENERAL  
 DEDICATED  
 FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** This bill has the following provisions:

- A. *Increase in Reimbursement in Death Penalty Cases* – It allows a county to submit a request to the Public Defender Commission to be reimbursed from the Public Defense Fund for an amount equal to 80% of the county's expenditures for indigent defense services provided to a defendant against whom the death sentence is sought. It requires the Public Defender Commission to authorize an amount of reimbursement due the county that is equal to at least 50% but not more than 80% of the county's expenditures for indigent defense services provided for a defendant against whom the death sentence is sought as determined by the Public Defender Commission.
- B. *Additional Annual Transfer of \$600,000* – It requires the Treasurer of State to transfer \$8,000,000 from the state General Fund to the Public Defense Fund each year instead of \$7,400,000.
- C. *Increase in Public Defense Administration Fee* – It requires a person to pay a Public Defense Administration Fee of \$6 instead of \$5 to be deposited in the state General Fund if the person is: (1) convicted of an offense; (2) required to pay a pretrial diversion fee; (3) found to have committed an infraction; or (4) found to have violated an ordinance.

**Effective Date:** July 1, 2012.

**Explanation of State Expenditures:**

**Explanation of State Revenues:** *Additional Annual Transfer of \$600,000* – This bill increases the annual

transfer of money from the state General Fund to the Public Defense Fund by \$300,000 each six months.

Semi- Annual Transfers from State General Fund to Public Defense Fund						
New Semi-annual	Current semi-annual	Added Semi-annual				Annual Increase
\$4,000,000	- \$3,700,000	= \$300,000	x	2	=	\$600,000

*Increase in Public Defense Administration Fee* – The loss to the state General Fund is offset by the increase in the Public Defense Administration Fee as shown in the following table. LSA found that the DNA Sample Processing Fee imposes a \$2 fee on the same cases as the proposed increase in the Public Defense Administration Fee. Based on the revenue history of the DNA Sample Processing Fee, LSA estimates that the new revenue would be \$300,000 every six months, or \$600,000 annually.

**Revenue Deposited into DNA Sample Processing Fund from DNA Sample Processing Fee, FY 2008 - FY 2011**

Revenue (in \$M) Based on a \$2 Fee					Based on a \$1 Fee	
2008	2009	2010	2011	4-year Avg.	From \$1	Six-Month Amount
\$1.11	\$1.25	\$1.34	\$1.09	\$1.20	\$600,000	\$300,000

**Explanation of Local Expenditures:** *Increase in Reimbursement in Death Penalty Cases* – The following table shows the average annual reimbursement to counties for death penalty cases over the past ten years and the added claims if 80% of the claims were paid instead of 50%. The additional reimbursements could be up to \$324,000.

Additional Annual Reimbursements from the Public Defense Fund to Counties with Death Penalty Cases						
Reimbursements at 50%		Estimated Annual Costs		Reimbursements (At 80%)		Added Reimbursements above 50%
\$540,000	x 2	= \$1,080,000	-	\$864,000	=	\$324,000

*Background on Death Penalty Cases* – Over the past 20 years, the number of death penalty requests has declined significantly, from an annual average of 15 in the first decade of the 1990's to fewer than 3 per year between 2006 and 2010.

**Number of Death Penalty Requests by Calendar Year**

CY	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Requests	23	11	9	17	15	9	10	15	7	11	6	4	3	6	6	6	0	4	0	3	1
5-Year Avg.	15					10					5					3					

One reason given for the decline in the number of death penalty requests is the significant expense of successfully prosecuting one. The following table displays the cost components for 26 death penalty cases,

19 cases where life without parole is the most serious sentence, and 47 murder cases in which the most serious sentence is a term of years.

<b>Cost Components for Murder Trials Based on 92 Murder Cases Between 2000 and 2007</b>							
<b>Original Request</b>	<b>Number of Cases</b>	<b>Jury Trials</b>	<b>Attorney Costs <sup>1</sup></b>	<b>Expert Witnesses <sup>1</sup></b>	<b>Other Costs</b>	<b>Costs of Appeals</b>	<b>Total Costs</b>
Death Penalty	26	\$4,885	\$90,754	\$38,260	\$0	\$95,870	\$229,769
Life Without Parole	19	\$3,525	\$10,560	\$51,066	\$1,866	\$35,280	\$102,297
Term of Years	47	\$5,497	\$50,082	\$6,108	\$56	\$2,540	\$64,284

<sup>1</sup> The Public Defender Fund reimburses counties for 50% of the costs of attorney representation and expert witnesses when the prosecuting attorney requests a death penalty and 40% if the request is either for life without parole or a term of years . The county pays for the entire costs of juries and costs of appeals.

**Explanation of Local Revenues:**

**State Agencies Affected:** Public Defender Council.

**Local Agencies Affected:** Trial courts with criminal jurisdiction; prosecuting attorneys.

**Information Sources:** *Indiana Judicial Reports*, LSA survey, Department of Correction

**Fiscal Analyst:** Mark Goodpaster, 317-232-9852.